

**GOVERNMENTAL NONPROFIT CORPORATION ACT****AMENDMENTS**

2019 GENERAL SESSION

STATE OF UTAH

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**LONG TITLE****General Description:**

This bill amends definitions and provides for certain training relating to governmental nonprofit corporations.

**Highlighted Provisions:**

This bill:

- ▶ amends definitions used to identify a governmental nonprofit corporation;
- ▶ requires the state auditor to:
  - develop a training or other informational resource regarding best practices for financial controls and board governance; and
  - distribute the training or other informational resource to certain state and local entities and governmental nonprofit corporations; and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**11-13a-102**, as enacted by Laws of Utah 2017, Chapter 441

**67-3-1**, as last amended by Laws of Utah 2018, Chapters 200 and 256

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*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **11-13a-102** is amended to read:

**11-13a-102. Definitions.**

As used in this chapter:

(1) "Controlling interest" means that one or more governmental entities collectively represent a majority of the governing board's voting power as ~~[outlined]~~ described in the nonprofit corporation's governing documents[-];

(a) by directly controlling one or more board member's actions on the board; or

(b) by virtue of one or more board members holding elected offices within the governmental entity, regardless of whether the governmental entity placed the member on the board or controls the board members actions on the board.

(2) (a) "Governing board" means the body that governs a governmental nonprofit corporation.

(b) "Governing board" includes a board of directors.

(3) "Governmental entity" means the state, a county, a municipality, a local district, a special service district, a school district, a state institution of higher education, or any other political subdivision or administrative unit of the state.

(4) (a) "Governmental nonprofit corporation" means:

(i) a nonprofit corporation that is wholly owned or wholly controlled by one or more governmental entities~~[-, unless the nonprofit corporation receives no operating funding or other financial support from any governmental entity]~~; or

(ii) a nonprofit corporation in which one or more governmental entities exercise a controlling interest and:

(A) that exercises taxing authority;

(B) that imposes a mandatory fee for association or participation with the nonprofit corporation where that association or participation is mandated by law; or

(C) that receives a majority of the nonprofit corporation's operating funding from one or more governmental entities under the nonprofit corporation's governing documents, except where voluntary membership fees, dues, or assessments compose the operating funding.

(b) "Governmental nonprofit corporation" does not include a water company, as that term is defined in Section 16-4-102, unless the water company is wholly owned by one or more governmental entities.

(5) "Municipality" means a city, town, or metro township.

Section 2. Section **67-3-1** is amended to read:

**67-3-1. Functions and duties.**

(1) (a) The state auditor is the auditor of public accounts and is independent of any executive or administrative officers of the state.

(b) The state auditor is not limited in the selection of personnel or in the determination of the reasonable and necessary expenses of the state auditor's office.

(2) The state auditor shall examine and certify annually in respect to each fiscal year, financial statements showing:

(a) the condition of the state's finances;

(b) the revenues received or accrued;

(c) expenditures paid or accrued;

(d) the amount of unexpended or unencumbered balances of the appropriations to the agencies, departments, divisions, commissions, and institutions; and

(e) the cash balances of the funds in the custody of the state treasurer.

(3) (a) The state auditor shall:

(i) audit each permanent fund, each special fund, the General Fund, and the accounts of any department of state government or any independent agency or public corporation as the law requires, as the auditor determines is necessary, or upon request of the governor or the Legislature;

(ii) perform the audits in accordance with generally accepted auditing standards and other auditing procedures as promulgated by recognized authoritative bodies;

(iii) as the auditor determines is necessary, conduct the audits to determine:

(A) honesty and integrity in fiscal affairs;

(B) accuracy and reliability of financial statements;

(C) effectiveness and adequacy of financial controls; and

(D) compliance with the law.

(b) If any state entity receives federal funding, the state auditor shall ensure that the audit is performed in accordance with federal audit requirements.

(c) (i) The costs of the federal compliance portion of the audit may be paid from an appropriation to the state auditor from the General Fund.

(ii) If an appropriation is not provided, or if the federal government does not specifically provide for payment of audit costs, the costs of the federal compliance portions of the audit shall be allocated on the basis of the percentage that each state entity's federal funding

bears to the total federal funds received by the state.

(iii) The allocation shall be adjusted to reflect any reduced audit time required to audit funds passed through the state to local governments and to reflect any reduction in audit time obtained through the use of internal auditors working under the direction of the state auditor.

(4) (a) Except as provided in Subsection (4)(b), the state auditor shall, in addition to financial audits, and as the auditor determines is necessary, conduct performance and special purpose audits, examinations, and reviews of any entity that receives public funds, including a determination of any or all of the following:

(i) the honesty and integrity of all its fiscal affairs;

(ii) whether or not its administrators have faithfully complied with legislative intent;

(iii) whether or not its operations have been conducted in an efficient, effective, and cost-efficient manner;

(iv) whether or not its programs have been effective in accomplishing the intended objectives; and

(v) whether or not its management, control, and information systems are adequate, effective, and secure.

(b) The auditor may not conduct performance and special purpose audits, examinations, and reviews of any entity that receives public funds if the entity:

(i) has an elected auditor; and

(ii) has, within the entity's last budget year, had its financial statements or performance formally reviewed by another outside auditor.

(5) The state auditor shall administer any oath or affirmation necessary to the performance of the duties of the auditor's office, and may subpoena witnesses and documents, whether electronic or otherwise, and examine into any matter that the auditor considers necessary.

(6) The state auditor may require all persons who have had the disposition or management of any property of this state or its political subdivisions to submit statements regarding it at the time and in the form that the auditor requires.

(7) The state auditor shall:

(a) except where otherwise provided by law, institute suits in Salt Lake County in relation to the assessment, collection, and payment of its revenues against:

- 125 (i) persons who by any means have become entrusted with public money or property  
126 and have failed to pay over or deliver the money or property; and
- 127 (ii) all debtors of the state;
- 128 (b) collect and pay into the state treasury all fees received by the state auditor;
- 129 (c) perform the duties of a member of all boards of which the state auditor is a member  
130 by the constitution or laws of the state, and any other duties that are prescribed by the  
131 constitution and by law;
- 132 (d) stop the payment of the salary of any state official or state employee who:
- 133 (i) refuses to settle accounts or provide required statements about the custody and  
134 disposition of public funds or other state property;
- 135 (ii) refuses, neglects, or ignores the instruction of the state auditor or any controlling  
136 board or department head with respect to the manner of keeping prescribed accounts or funds;  
137 or
- 138 (iii) fails to correct any delinquencies, improper procedures, and errors brought to the  
139 official's or employee's attention;
- 140 (e) establish accounting systems, methods, and forms for public accounts in all taxing  
141 or fee-assessing units of the state in the interest of uniformity, efficiency, and economy;
- 142 (f) superintend the contractual auditing of all state accounts;
- 143 (g) subject to Subsection (8)(a), withhold state allocated funds or the disbursement of  
144 property taxes from a state or local taxing or fee-assessing unit, if necessary, to ensure that  
145 officials and employees in those taxing units comply with state laws and procedures in the  
146 budgeting, expenditures, and financial reporting of public funds;
- 147 (h) subject to Subsection (9), withhold the disbursement of tax money from any county,  
148 if necessary, to ensure that officials and employees in the county comply with Section  
149 59-2-303.1; and
- 150 (i) withhold state allocated funds or the disbursement of property taxes from a local  
151 government entity or a limited purpose entity, as those terms are defined in Section 67-1a-15 if  
152 the state auditor finds the withholding necessary to ensure that the entity registers and  
153 maintains the entity's registration with the lieutenant governor, in accordance with Section  
154 67-1a-15.
- 155 (8) (a) Except as otherwise provided by law, the state auditor may not withhold funds

under Subsection (7)(g) until a state or local taxing or fee-assessing unit has received formal written notice of noncompliance from the auditor and has been given 60 days to make the specified corrections.

(b) If, after receiving notice under Subsection (8)(a), a state or independent local fee-assessing unit that exclusively assesses fees has not made corrections to comply with state laws and procedures in the budgeting, expenditures, and financial reporting of public funds, the state auditor:

(i) shall provide a recommended timeline for corrective actions; and

(ii) may prohibit the state or local fee-assessing unit from accessing money held by the state; and

(iii) may prohibit a state or local fee-assessing unit from accessing money held in an account of a financial institution by filing an action in district court requesting an order of the court to prohibit a financial institution from providing the fee-assessing unit access to an account.

(c) The state auditor shall remove a limitation on accessing funds under Subsection (8)(b) upon compliance with state laws and procedures in the budgeting, expenditures, and financial reporting of public funds.

(d) If a local taxing or fee-assessing unit has not adopted a budget in compliance with state law, the state auditor:

(i) shall provide notice to the taxing or fee-assessing unit of the unit's failure to comply;

(ii) may prohibit the taxing or fee-assessing unit from accessing money held by the state; and

(iii) may prohibit a taxing or fee-assessing unit from accessing money held in an account of a financial institution by:

(A) contacting the taxing or fee-assessing unit's financial institution and requesting that the institution prohibit access to the account; or

(B) filing an action in district court requesting an order of the court to prohibit a financial institution from providing the taxing or fee-assessing unit access to an account.

(e) If the local taxing or fee-assessing unit adopts a budget in compliance with state law, the state auditor shall eliminate a limitation on accessing funds described in Subsection

187 (8)(d).

188 (9) The state auditor may not withhold funds under Subsection (7)(h) until a county has  
189 received formal written notice of noncompliance from the auditor and has been given 60 days  
190 to make the specified corrections.

191 (10) (a) The state auditor may not withhold funds under Subsection (7)(i) until the state  
192 auditor receives a notice of non-registration, as that term is defined in Section 67-1a-15.

193 (b) If the state auditor receives a notice of non-registration, the state auditor may  
194 prohibit the local government entity or limited purpose entity, as those terms are defined in  
195 Section 67-1a-15, from accessing:

196 (i) money held by the state; and

197 (ii) money held in an account of a financial institution by:

198 (A) contacting the entity's financial institution and requesting that the institution  
199 prohibit access to the account; or

200 (B) filing an action in district court requesting an order of the court to prohibit a  
201 financial institution from providing the entity access to an account.

202 (c) The state auditor shall remove the prohibition on accessing funds described in  
203 Subsection (10)(b) if the state auditor received a notice of registration, as that term is defined in  
204 Section 67-1a-15, from the lieutenant governor.

205 (11) Notwithstanding Subsection (7)(g), (7)(h), (7)(i), (8)(b), (8)(d), or (10)(b), the  
206 state auditor:

207 (a) shall authorize a disbursement by a local government entity or limited purpose  
208 entity, as those terms are defined in Section 67-1a-15, or a state or local taxing or fee-assessing  
209 unit if the disbursement is necessary to:

210 (i) avoid a major disruption in the operations of the local government entity, limited  
211 purpose entity, or state or local taxing or fee-assessing unit; or

212 (ii) meet debt service obligations; and

213 (b) may authorize a disbursement by a local government entity, limited purpose entity,  
214 or state or local taxing or fee-assessing unit as the state auditor determines is appropriate.

215 (12) (a) The state auditor may seek relief under the Utah Rules of Civil Procedure to  
216 take temporary custody of public funds if an action is necessary to protect public funds from  
217 being improperly diverted from their intended public purpose.

(b) If the state auditor seeks relief under Subsection (12)(a):

(i) the state auditor is not required to exhaust the procedures in Subsection (7) or (8);

and

(ii) the state treasurer may hold the public funds in accordance with Section 67-4-1 if a court orders the public funds to be protected from improper diversion from their public purpose.

(13) The state auditor shall:

(a) establish audit guidelines and procedures for audits of local mental health and substance abuse authorities and their contract providers, conducted pursuant to Title 17, Chapter 43, Part 2, Local Substance Abuse Authorities, Title 17, Chapter 43, Part 3, Local Mental Health Authorities, Title 51, Chapter 2a, Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local Entities Act, and Title 62A, Chapter 15, Substance Abuse and Mental Health Act; and

(b) ensure that those guidelines and procedures provide assurances to the state that:

(i) state and federal funds appropriated to local mental health authorities are used for mental health purposes;

(ii) a private provider under an annual or otherwise ongoing contract to provide comprehensive mental health programs or services for a local mental health authority is in compliance with state and local contract requirements, and state and federal law;

(iii) state and federal funds appropriated to local substance abuse authorities are used for substance abuse programs and services; and

(iv) a private provider under an annual or otherwise ongoing contract to provide comprehensive substance abuse programs or services for a local substance abuse authority is in compliance with state and local contract requirements, and state and federal law.

(14) The state auditor may, in accordance with the auditor's responsibilities for political subdivisions of the state as provided in Title 51, Chapter 2a, Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local Entities Act, initiate audits or investigations of any political subdivision that are necessary to determine honesty and integrity in fiscal affairs, accuracy and reliability of financial statements, effectiveness, and adequacy of financial controls and compliance with the law.

(15) (a) The state auditor may not audit work that the state auditor performed before



249 becoming state auditor.

250 (b) If the state auditor has previously been a responsible official in state government  
251 whose work has not yet been audited, the Legislature shall:

252 (i) designate how that work shall be audited; and

253 (ii) provide additional funding for those audits, if necessary.

254 (16) The state auditor shall:

255 (a) with the assistance, advice, and recommendations of an advisory committee  
256 appointed by the state auditor from among local district boards of trustees, officers, and  
257 employees and special service district boards, officers, and employees:

258 (i) prepare a Uniform Accounting Manual for Local Districts that:

259 (A) prescribes a uniform system of accounting and uniform budgeting and reporting  
260 procedures for local districts under Title 17B, Limited Purpose Local Government Entities -  
261 Local Districts, and special service districts under Title 17D, Chapter 1, Special Service  
262 District Act;

263 (B) conforms with generally accepted accounting principles; and

264 (C) prescribes reasonable exceptions and modifications for smaller districts to the  
265 uniform system of accounting, budgeting, and reporting;

266 (ii) maintain the manual under this Subsection (15)(a) so that it continues to reflect  
267 generally accepted accounting principles;

268 (iii) conduct a continuing review and modification of procedures in order to improve  
269 them;

270 (iv) prepare and supply each district with suitable budget and reporting forms; and

271 (v) (A) prepare instructional materials, conduct training programs, and render other  
272 services considered necessary to assist local districts and special service districts in  
273 implementing the uniform accounting, budgeting, and reporting procedures; and

274 (B) ensure that any training described in Subsection (15)(a)(v)(A) complies with Title  
275 63G, Chapter 22, State Training and Certification Requirements; and

276 (b) continually analyze and evaluate the accounting, budgeting, and reporting practices  
277 and experiences of specific local districts and special service districts selected by the state  
278 auditor and make the information available to all districts.

279 (17) (a) The following records in the custody or control of the state auditor are

protected records under Title 63G, Chapter 2, Government Records Access and Management Act:

(i) records that would disclose information relating to allegations of personal misconduct, gross mismanagement, or illegal activity of a past or present governmental employee if the information or allegation cannot be corroborated by the state auditor through other documents or evidence, and the records relating to the allegation are not relied upon by the state auditor in preparing a final audit report;

(ii) records and audit workpapers to the extent they would disclose the identity of a person who during the course of an audit, communicated the existence of any waste of public funds, property, or manpower, or a violation or suspected violation of a law, rule, or regulation adopted under the laws of this state, a political subdivision of the state, or any recognized entity of the United States, if the information was disclosed on the condition that the identity of the person be protected;

(iii) before an audit is completed and the final audit report is released, records or drafts circulated to a person who is not an employee or head of a governmental entity for their response or information;

(iv) records that would disclose an outline or part of any audit survey plans or audit program; and

(v) requests for audits, if disclosure would risk circumvention of an audit.

(b) The provisions of Subsections (17)(a)(i), (ii), and (iii) do not prohibit the disclosure of records or information that relate to a violation of the law by a governmental entity or employee to a government prosecutor or peace officer.

(c) The provisions of this Subsection (17) do not limit the authority otherwise given to the state auditor to classify a document as public, private, controlled, or protected under Title 63G, Chapter 2, Government Records Access and Management Act.

(d) (i) As used in this Subsection (17)(d), "record dispute" means a dispute between the state auditor and the subject of an audit performed by the state auditor as to whether the state auditor may release a record, as defined in Section 63G-2-103, to the public that the state auditor gained access to in the course of the state auditor's audit but which the subject of the audit claims is not subject to disclosure under Title 63G, Chapter 2, Government Records Access and Management Act.

(ii) The state auditor may submit a record dispute to the State Records Committee, created in Section 63G-2-501, for a determination of whether the state auditor may, in conjunction with the state auditor's release of an audit report, release to the public the record that is the subject of the record dispute.

(iii) The state auditor or the subject of the audit may seek judicial review of a State Records Committee determination under Subsection (17)(d)(ii), as provided in Section 63G-2-404.

(18) If the state auditor conducts an audit of an entity that the state auditor has previously audited and finds that the entity has not implemented a recommendation made by the state auditor in a previous audit, the state auditor shall notify the Legislative Management Committee through its audit subcommittee that the entity has not implemented that recommendation.

(19) (a) As used in this subsection, "governmental nonprofit corporation" means the same as that term is defined in Section 11-13a-102.

(b) The state auditor shall:

(i) develop a training or other informational resource to aid a governmental nonprofit corporation in implementing best practices for financial controls and board governance; and

(ii) provide the training or other informational resource described in Subsection (19)(b)(i) to each of the following entities that provides any required budgeting, expenditure, or financial report to the state auditor:

(A) a governmental nonprofit corporation;

(B) a state agency or political subdivision of the state that wholly controls or has a controlling interest in a governmental nonprofit corporation, as described in Section 11-13a-102; and

(C) any other entity that, in the opinion of the state auditor, could benefit from the resource.